

APR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ANTHONY L. WELCH,

Plaintiff - Appellant,

v.

Dr. SETHI; et al.,

Defendants - Appellees.

No. 05-15409

D.C. No. CV-02-06556-REC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, District Judge, Presiding

Submitted April 5, 2006^{**}

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Anthony L. Welch, a California state prisoner, appeals pro se from the district court's judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging Eighth Amendment violations based on inadequate medical care for his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

injured hand. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the grant of summary judgment, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment for defendants because Welch failed to raise a triable issue of fact as to whether Dr. Kordan was deliberately indifferent to his serious medical needs and conceded in his deposition that Dr. Sethi was not his treating physician. *See McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (“Liability under section 1983 arises only upon a showing of personal participation by the defendant”).

The district court properly dismissed the other defendants from the case because Welch did not name them as defendants in the caption or seek relief from them in the prayer for relief. *See Fed. R. Civ. P. 10(a)*.

Welch’s remaining contentions are without merit.

AFFIRMED.